

ANSA ASSUNCAO, LLP

(A Pennsylvania Limited Liability Partnership)

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BrassCraft Manufacturing Company and

Masco Corporation

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EUGENE ANNACONE and JEANIE
ANNACONE, by their subrogee FARM
FAMILY CASUALTY INSURANCE
COMPANY

Plaintiff,

v.

BRASS CRAFT, MASCO CORPORATION,
BRASS CRAFT MANUFACTURING CO.,
and JOHN DOES 1-10; and ABC CORPS 1-
10,

Defendants.

Civil Action No.: 2:17-cv-003962-WJM-MF

**MASCO CORPORATION'S ANSWER TO
PLAINTIFF'S COMPLAINT WITH
AFFIRMATIVE DEFENSES**

Defendant Masco Corporation ("Masco"), by and through its undersigned counsel, Ansa Assuncao LLP, answers Plaintiff's Complaint as follows:

ANSWERING THE FIRST COUNT

1. Masco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the First Count of the Complaint, and leaves Plaintiff to its proofs.

2. Masco denies the allegations contained in Paragraph 2 of the First Count of the Complaint.

3. Masco denies the allegations contained in Paragraph 3 of the First Count of the Complaint.

4. Masco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the First Count of the Complaint, and leaves Plaintiff to its proofs.

5. Masco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the First Count of the Complaint, and leaves Plaintiff to its proofs.

6. Masco denies the allegations contained in Paragraph 6 of the First Count of the Complaint.

7. Masco denies the allegations contained in Paragraph 7 of the First Count of the Complaint to the extent they are directed against Masco and BrassCraft Manufacturing Company (“BrassCraft”), but denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

ANSWERING THE SECOND COUNT

1. Masco repeats and re-alleges each and every prior pleading response as though fully set forth herein.

2. Masco denies the allegations contained in Paragraph 2 of the Second Count of the Complaint to the extent they are directed against Masco and BrassCraft, but denies knowledge or

information sufficient to form a belief as to the truth of the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

3. Masco denies the allegations contained in Paragraph 3 of the Second Count of the Complaint to the extent they are directed against Masco and BrassCraft, but denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

4. Masco denies the allegations contained in Paragraph 4 of the Second Count of the Complaint to the extent they are directed against Masco and BrassCraft, but denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

5. Masco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Second Count of the Complaint, and leaves Plaintiff to its proofs.

ANSWERING THE THIRD COUNT

1. Masco repeats and re-alleges each and every prior pleading response as though fully set forth herein.

2. Masco denies the allegations contained in Paragraph 2 of the Third Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

3. Masco denies the allegations contained in Paragraph 3 of the Third Count of the Complaint.

4. Masco denies the allegations contained in Paragraph 4 of the Third Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

ANSWERING THE FOURTH COUNT

1. Masco repeats and re-alleges each and every prior pleading response as though fully set forth herein.

2. Masco denies the allegations contained in Paragraph 2 of the Fourth Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs. By way of further response, Masco states that any warranty speaks for itself.

3. Masco denies the allegations contained in Paragraph 3 of the Fourth Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs. By way of further response, Masco states that any warranty speaks for itself.

4. Masco denies the allegations contained in Paragraph 4 of the Fourth Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs. By way of further response, Masco states that any warranty speaks for itself.

5. Masco denies the allegations contained in Paragraph 5 of the Fourth Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

6. Masco denies the allegations contained in Paragraph 6 of the Fourth Count of the Complaint to the extent they are directed against Masco and BrassCraft, but makes no response to the allegations contained in this Paragraph that are directed against other parties, and leaves Plaintiff to its proofs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted and Defendant reserves the right to move at or before the time of trial to dismiss same.

SECOND AFFIRMATIVE DEFENSE

Liability against these Defendants is precluded as a matter of law based upon the balanced consideration of risk utility factors.

THIRD AFFIRMATIVE DEFENSE

The claimant and/or its insured assumed the risk and was fully cognizant of any and all circumstances surrounding the alleged incident.

FOURTH AFFIRMATIVE DEFENSE

The claimant and/or its insured are guilty of comparative fault in voluntarily and unreasonably proceeding to encounter a known danger.

FIFTH AFFIRMATIVE DEFENSE

The incident and damages complained of were caused by unauthorized, unintended or improper use and/or installation of the product complained of, and as the result of failure to exercise reasonable and ordinary care, caution or vigilance.

SIXTH AFFIRMATIVE DEFENSE

Defendant did not breach any duty that it may have owed to Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Any and all damages sustained were the result of the actions of a third party over which this Defendant had no control.

EIGHTH AFFIRMATIVE DEFENSE

This Defendant did not design, manufacture, distribute, market or sell the product and/or component at issue.

NINTH AFFIRMATIVE DEFENSE

The product complained of was substantially altered, damaged, and/or modified after it left this party's control.

TENTH AFFIRMATIVE DEFENSE

The damages of the claimant, if any, are limited or barred by New Jersey law as respects comparative negligence.

ELEVENTH AFFIRMATIVE DEFENSE

The product did not deviate from the design specifications, formulae or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae. N.J.S.A. § 2A:58C-2.

TWELFTH AFFIRMATIVE DEFENSE

The product was not designed in a defective manner. N.J.S.A. § 2A:58C-3.

THIRTEENTH AFFIRMATIVE DEFENSE

The product contained adequate warnings and/or instructions. N.J.S.A. § 2A:58C-4.

FOURTEENTH AFFIRMATIVE DEFENSE

The product and/or conduct of Defendant and/or its agents, employees or servants was not the proximate cause of plaintiff's damages, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

At the time the product left the control of the Defendant, there was not a practical and technically feasible alternative design that would have prevented the alleged harm without substantially impairing the reasonably anticipated or intended function of the product. N.J.S.A. § 2A:58C-3(a)(1).

SIXTEENTH AFFIRMATIVE DEFENSE

The characteristics of the product are obvious and known to the ordinary consumer or user and this Defendant is not liable for alleged harm caused by an allegedly unsafe aspect of the product that is an inherent characteristic of the product and that would be recognized by the ordinary person who uses or consumes the product with the ordinary knowledge common to the class of persons for whom the product is intended. N.J.S.A. § 2A:58C-3(a)(2).

SEVENTEENTH AFFIRMATIVE DEFENSE

This Defendant is not liable for the alleged harm because said harm was caused by an unavoidably unsafe aspect of the product and the product was accompanied by an adequate warning or instruction. N.J.S.A. § 2A:58C-3(a)(3).

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff is guilty of spoliation of evidence and Defendant is entitled to the dismissal of all or part of Plaintiff's claims.

NINETEENTH AFFIRMATIVE DEFENSE

The danger complained of was open and obvious and thus no warning was required.

TWENTIETH AFFIRMATIVE DEFENSE

The incident which forms the basis of this litigation and which allegedly caused injuries and damages to the claimant was proximately caused or contributed to by the fault of third persons

not parties to this litigation. The responsibility of the party filing this answer and the right of the claimant to recover in this litigation can only be determined after the percentages of responsibility of all parties to the incident are determined whether or not they are parties to this litigation. Accordingly, this party seeks an adjudication of the percentage of fault of the claimant and each and every other person whose fault contributed to the incident.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by application of the sophisticated user and/or learned intermediary doctrine.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or otherwise limited by application of New Jersey's Uniform Commercial Code.

TWENTY-THIRD AFFIRMATIVE DEFENSE

All claims for breach of express and implied warranties are barred by lack of privity, lack of timely notice, and because this Defendant did not issue any warranty for the product.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The product was reasonably fit, suitable, and safe for its intended purpose.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred or otherwise limited by the doctrines of waiver, unclean hands and/or estoppel.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred or otherwise limited by the doctrines of *res judicata* and/or collateral estoppel.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its claimed damages, if any, as required by law.

Defendant reserves the right to raise additional affirmative defenses as discovery in this matter proceeds.

WHEREFORE, Defendant Masco Corporation respectfully requests that the Court dismiss the Complaint, enter judgment in its favor, and grant it an award of its attorneys' fees and costs as permitted by law, and such further relief that this Court deems appropriate.

JURY DEMAND

Defendant Masco Corporation demands a trial by jury as to all issues in this matter so triable. Defendant does not consent to a verdict by less than six jurors in this matter.

Dated: June 8, 2017

Respectfully submitted,

/s/ James S. Coons

James S. Coons

David A. Gonzalez

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Masco Corporation*

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I, James S. Coons, Esquire, certify that to my knowledge, the matter in controversy is not subject to any action or arbitration pending or presently contemplated. I have no knowledge, at this time, of any other parties who should be joined in this action.

Dated: June 8, 2017

Respectfully submitted,

/s/ James S. Coons

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CERTIFICATE OF SERVICE

It is hereby certified that on this 8th day of June, 2017, the foregoing document was filed electronically with the Clerk of the Court to be served via the Court's electronic filing system upon all counsel of record.

/s/ James S. Coons

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